

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUFUS FRAZIER and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 02-1211; Oral Argument Held May 20, 2003;
Issued June 26, 2003*

Appearances: *Rufus Frazier, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established his entitlement to a schedule award for permanent impairment causally related to his accepted work injury.

On January 28, 1997 appellant, then a 43-year-old flat sorter machine expediter, filed a notice of occupational disease alleging that he developed a back condition in the performance of duty. In a statement attached to his CA-2 claim form, appellant noted that sometime during 1995 he began having periodic, tingling pain and numbness in his right and left arms. He described that he was constantly required to push, pull and lift heavy containers at work. The Office of Workers' Compensation Programs accepted the claim for a cervical disc herniation at C6-7. Appellant stopped work on December 4, 1996 and underwent surgery on December 5, 1996 consisting of a cervical disc fusion at C6-7 performed by Dr. Mario Zuccarello, a Board-certified neurosurgeon. Appellant received compensation for wage loss from December 4, 1996 to February 2, 1997.

On December 7, 2001 appellant filed a CA-7 claim form for a schedule award.

In a report dated October 25, 2001, Dr. Zuccarello discussed appellant's history of injury and opined that appellant had reached maximum medical improvement with respect to his cervical disc condition. He reported that appellant had normal motor strength and a normal sensory examination. Cerebellar function and deep tendon reflexes were likewise reported as normal. Dr. Zuccarello listed negative plantar reflexes with normal flexion and extension of the cervical spine. He opined that appellant had a seven percent permanent impairment of the cervical spine according to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

In a report dated December 18, 2001, Dr. Zuccarello indicated that appellant had done very well after his cervical surgery. He noted that appellant had no more pain or numbness in the left arm. Normal strength and sensory function were reported with normal flexion and extension of the cervical spine. Deep tendon and plantar reflexes were also normal. Dr. Zuccarello opined that appellant had a 15 to 18 percent impairment of the whole person based on his cervical disc condition under section 15-6, Table 15-5, of the fifth edition of the A.M.A., *Guides*.

The Office forwarded a copy of Dr. Zuccarello's December 18, 2001 report to an Office medical adviser for review and an opinion as to whether appellant had any permanent impairment according to the fifth edition of the A.M.A., *Guides*, which might entitle him to a schedule award.¹ In a report signed on February 19, 2002, the Office medical adviser, Dr. Douglas C. Allen, noted that Dr. Zuccarello's physical examination of appellant's upper extremities showed no motor or sensory deficits. He concluded that appellant had zero percent impairment of the upper extremities based on the fifth edition of the A.M.A., *Guides*.

In a decision dated February 27, 2002, the Office denied appellant's claim for a schedule award on the grounds that he had no ratable impairment due to the accepted work injury.

The Board finds that appellant failed to establish his entitlement to a schedule award based on permanent impairment causally related to his accepted work injury.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing federal regulation,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.⁴ However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

A schedule award is not payable for the loss or loss of use of any member of the body or function which is not specifically enumerated in section 8107 of the Act or its implementing regulations.⁶ The Act specifically excludes the back as an organ and therefore, the back does not

¹ On January 29, 2001 the Office announced that effective February 1, 2001 all claims examiners and hearing representatives should begin utilizing the fifth edition of the A.M.A., *Guides*. This action was made in accordance with the authority granted the Office under 20 C.F.R. § 10.404 (1999).

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.404 (1999).

⁴ 5 U.S.C. § 8107(c)(19).

⁵ See 20 C.F.R. § 10.404 (1999).

⁶ 5 U.S.C. § 8107.

come under the provisions for payment of a schedule award.⁷ Thus, to the extent that appellant seeks a schedule award for permanent impairment due to his cervical back injury, the Office correctly denied compensation.

While a schedule award is not payable under the Act for an impairment of the back, a schedule award is payable for permanent impairment related to a scheduled member that is due to the work-related back condition.⁸ Appellant, however, has not submitted any medical evidence demonstrating that he has permanent impairment of the upper extremities due to his accepted work injury. Dr. Zuccarello stated that appellant had 15 to 18 percent impairment of the whole person,⁹ but he did not specify an impairment rating for the upper extremities. Because Dr. Zuccarello obtained physical findings, his December 18, 2001 report was reviewed by an Office medical adviser to ascertain whether or not appellant was entitled to a schedule award based on impairment to the upper extremities under the fifth edition of the A.M.A., *Guides*.¹⁰ The Office medical adviser found that appellant had no ratable impairment due to the accepted work injury. Based on the opinion of the Office medical adviser and the lack of medical evidence in the record to establish permanent impairment of the upper extremities, the Board concludes that the Office properly denied appellant's request for a schedule award.

⁷ See *James E. Mills*, 43 ECAB 215 (1991) (neither the Act nor its implementing regulations provides for a schedule award for impairment to the back or to the body as a whole).

⁸ See *Thomas J. Engelhart*, 50 ECAB 319 (1999) (a claimant may be entitled to a schedule award for permanent impairment to an upper extremity or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine).

⁹ Appellant is not entitled to a schedule award based on whole person impairment. See *James E. Mills*, *supra* note 7.

¹⁰ The A.M.A., *Guides* were prepared to establish reference tables and evaluation protocols which, if followed, may allow the clinical findings of the physician to be compared directly with the impairment criteria and related to impairment percentages. While the medical opinion of the treating physician may be accorded some weight, his or her clinical data can be readily extrapolated and evaluated within the tables and guidelines as presented. *Michael D. Nielsen*, 49 ECAB 453 (1996).

The decision of the Office of Workers' Compensation Programs dated February 27, 2002 is hereby affirmed.

Dated, Washington, DC
June 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member